A Stir Down Under

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A Stir Down Under

An American political scientist's book, Inside the Mason Court, includes what some perceive to be "activist" comments by some Australian judges and has caused quite a stir Down Under.

Australian Prime Minister John Howard's conservative supporters are hoping Jason Pierce's book gives Howard a boost in the polls leading up to Australia's November election. They fear a Howard defeat will allow a victorious Labour Party to load the judiciary with more politicized, activist judges, Pierce said. Some of the judges suspected of making "activist" comments were appointed by Howard's more liberal predecessors.

"The book has generated a debate about the (judicial) selection process," said Pierce, a UD assistant political science professor. "I think my book was presented as 'red meat' to some (of Howard's supporters) who are saying 'you better vote for Howard (or we'll see these types of activist judges again). In my responses, I've tried to tamp down some of the sensationalism."

Some Australians have gone as far to implore Pierce to spill the beans on which comments came from what judges in an effort to out the "activist" judges. Pierce said he will not do so because of confidentiality agreements with the judges.

Pierce said it wasn't his intention to lend support to any candidate or stoke a national debate about judicial activism with Inside the Mason Court. He only wanted to show how the Australian High Court went through a controversial transformation in the 1990s, becoming less deferential toward the other government branches, tackling politically controversial issues and employing novel legal methods to decide cases.

"I wanted to explain why the transformation occurred and what the judges thought they were doing," Pierce said. "It's akin to what happened in the U.S. in the 1960s with the (Earl) Warren court."

The difference in reactions among Australians and Americans, according to Pierce, is that many Americans have acknowledged the politicization of their highest court, rightly or wrongly, whereas many Australians have not accepted it.

"Historically, in Australia, judges were seen as apolitical, in part, because they are appointed by the prime minister without public confirmation hearings," Pierce said. "Proponents of the existing appointment process say having the prime minister make direct appointments ensure that judges with the greatest merit get the job.

"In the U.S., I've heard about many U.S. lawyers not wanting to become judges because of our political process."

Inside the Mason Court has reached No. 8 on Amazon.com's best-sellers list for books about Australia.

For interviews, contact Shawn Robinson at 937-229-3391.